

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

WARREN HARLESS,

Petitioner,

v.

WARDEN, ROSS
CORRECTIONAL INSTITUTION,

Respondent.

CASE NO. 2:16-CV-00196

JUDGE ALGENON L. MARBLEY

Magistrate Judge Elizabeth A. Preston Deavers

ORDER and
REPORT AND RECOMMENDATION

Petitioner brings the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He asserts that he was improperly sentenced on his convictions pursuant to his guilty plea in the Ashland County Court of Common Pleas on complicity to breaking and entering and complicity to theft. However, Petitioner's sentence apparently has now completely expired and he has since been released from incarceration. Respondent therefore has filed a *Motion to Dismiss* (ECF No. 10) this action as moot.

The Court expressly advised Petitioner that the failure to file a response to Respondent's *Motion to Dismiss* would result in this Court's consideration of the *Motion to Dismiss* as unopposed. *Order* (ECF No. 11.) Still, Petitioner has not filed a response in opposition to the *Motion to Dismiss*. In view of the lack of any response from the Petitioner, the Court presumes that Petitioner no longer wishes to pursue these proceedings and does not oppose the Respondent's motion.

Therefore, the Magistrate Judge **RECOMMENDS** that Respondent's unopposed *Motion to Dismiss* (ECF No. 10) be **GRANTED** and that this action be **DISMISSED**.

Petitioner's *Motion to Appoint Counsel* (ECF No. 2) is **DENIED**.

Procedure on Objections

If any party objects to this *Report and Recommendation*, that party may, within fourteen days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to have the district judge review the *Report and Recommendation de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

IT IS SO ORDERED.

s/ Elizabeth A. Preston Deavers

Elizabeth A. Preston Deavers
United States Magistrate Judge